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10 **IN THE SUPREME COURT**  
11 **STATE OF ARIZONA**

12 In the Matter of:

Supreme Court No. R-16-0017

13 **PETITION TO MODIFY RULE**  
14 **5.1(a), ARIZONA RULES OF**  
15 **CIVIL PROCEDURE**

**COMMENT OF**  
**THE STATE BAR OF ARIZONA**

16 A Petition has been submitted to amend Rule 5.1 of the Arizona Rules of  
17 Civil Procedure to simplify the procedure for attorneys from the same  
18 governmental law office or a public or private law firm to substitute or associate  
19 another attorney from the same office or firm as counsel of record. The proposed  
20 Rule 5.1 would add a new subsection (a)(2)(D) that reads as follows:

21 (D) Notwithstanding the provisions of Paragraph (a)(2) of  
22 this Rule, a governmental law office or a public or private  
23 law firm that has appeared as counsel of record may  
24 substitute or associate an attorney who is a member of,  
25 associated with, or otherwise employed by that office or  
firm, by timely filing a notice of substitution or  
association with the court. The notice shall state the  
names of the attorneys who are the subjects of the

1 substitution or association and the current address and e-  
2 mail address of the attorney substituting or associating.

3 The State Bar supports the Petition's proposal, but suggests that it be implemented  
4 through different language that is modeled after the proposed amendment to the  
5 District of Arizona's Local Civil Rule 83.3 and that conforms to the style  
6 conventions of the Task Force on the Arizona Rules of Civil Procedure. Proposed  
7 language is included in the attached Exhibits 1-2.<sup>1</sup>  
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9 **I. The Proposed Rule Change Would Ease Administrative Burdens and**  
10 **Promote Judicial Efficiency.**

11 As explained in the Petition, the current Arizona Rule of Civil Procedure  
12 5.1(a)(2) establishes the procedure for withdrawal and substitution of an attorney of  
13 record. A withdrawal or substitution requires first either an application bearing the  
14 client's written approval or a motion. It then requires a formal written order granting  
15 the withdrawal.  
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17 The current procedure, however, is unnecessarily onerous where a law firm or  
18 governmental law office simply wants to substitute one attorney in the office for  
19 another attorney in the same office. The concerns arising when an entirely new  
20 office or firm takes over the case do not arise when the same office or firm continues  
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24 <sup>1</sup> Exhibit 1 is a redline against the current Rule 5.1(a)(2), and Exhibit 2 is a redline  
25 against the Task Force's proposed Rule 5.3(a)(2), which substantively covers the  
same issue as the current Rule 5.1(a)(2).

1 the representation, simply with different lawyers. In today's legal industry, attorneys  
2 often switch law firms or law offices, requiring different attorneys from the same  
3 office to assume responsibility for cases. Clients even often know early on that  
4 different attorneys from the same office or firm may need to work on their cases.  
5 Further, when the same office or firm takes over, there is no need to transfer files  
6 across offices, and the institutional knowledge of the matter can more easily be given  
7 to the attorney(s) assuming control of the matter. Indeed, it would not be uncommon  
8 for other attorneys from the same office or firm to have worked on the matter even  
9 before the original attorney of record seeks to withdraw. The simple notice  
10 procedure that the Petition proposes gives adequate notice to the court and the  
11 parties, without requiring the same formal procedures that are justified when an  
12 entirely new office or firm takes over the case.

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14 Arizona would hardly be the first jurisdiction to ease administrative burdens  
15 on litigants and the court where the same office or firm continues the representation.  
16 Namely, the District of Arizona Local Civil Rule 83.3 incorporates this procedure.  
17 And the District of Arizona is not alone. *See, e.g.,* D. N.H. Local R. 83.6(d) (notice  
18 of withdrawal sufficient if another attorney from the same law firm, government  
19 agency, or in-house legal counsel department will continue to represent the client);  
20 D. Or. Local Civ. R. 83-11 (notice of withdrawal suffices if a member of the  
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1 withdrawing attorney's law firm remains counsel of record); D. Wash. Local Civ. R.  
2 83.2 (no order of substitution required for a change of counsel within the same firm;  
3 notice of the change suffices); W.D. Mo. Bankr. R. 2091-1 (notice of substitution  
4 permitted if new counsel is employed at the same law firm as the former attorney of  
5 record).  
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8 **II. The Language of Rule 5.1 Should Be Amended to Conform with the**  
9 **Proposed Structure of Amended District of Arizona Local Civil Rule 83.3**  
10 **and with Current Stylistic Conventions.**

11 The Petition proposes language that mirrors the *current* version of the District  
12 of Arizona Local Civil Rule 83.3(b)(4). A district court committee, however, has  
13 proposed amending Local Civil Rule 83.3(b), keeping the substance of the rule but  
14 clarifying the language. In particular, the proposed Local Rule eliminates  
15 superfluous language and removes ambiguity as to whether an "law office" or "firm"  
16 can be "counsel of record"—as opposed to only *attorneys* being "counsel of record."  
17 Ex. 3 (Proposed Amendment to LRCiv 83.3). An earlier subsection of LRCiv 83.3(b)  
18 also references that the general rule regarding attorney withdrawal and substitution  
19 does not apply to a "change of counsel within the same law firm or governmental  
20 law office." *Id.*  
21  
22

23 As the Petitioner likely recognized, there is value in having the Arizona rule  
24 and the federal local rule consistent on administrative issues like these. That value  
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1 can best be realized if Arizona's Rule 5.1(a)(2) conforms to the proposed amended  
2 version of LRCiv 83.3(b), assuming the proposed amendment is approved.<sup>2</sup>  
3

4 Further, Arizona's Rule 5.1 should conform to current stylistic conventions,  
5 even though that would result in Arizona's rule differing slightly from Local Rule  
6 83.3. For example, the stylistic convention undertaken by the Task Force on the  
7 Arizona Rules of Civil Procedure generally avoids using the potentially-ambiguous  
8 term "shall" when a different term like "must" or "may" would be clearer. The  
9 Petition (as well as the current and proposed Local Rule 83.3) say that the notice of  
10 change of counsel "shall" include the name of the attorneys who are the subjects of  
11 the substitution or the association and the current address and e-mail address of the  
12 attorney substituting or associating. Clarifying that the information "must" be  
13 provided would conform to current stylistic conventions and reduce ambiguity.  
14 Current stylistic conventions also recommend that the phrase "where there has been  
15 a change of counsel," as in the proposed Local Rule 83.3, be revised to "if there is a  
16 change of counsel." Finally, the sentence beginning with "[w]here there has been a  
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23 <sup>2</sup> Local Civil Rule 83.3 includes additional provisions that are outside the scope of  
24 the appropriate procedure for a withdrawal or substitution involving the same law  
25 firm or governmental law office, and this Comment takes no position on whether  
Ariz. R. Civ. P. 5.1 should incorporate those portions of the Local Rule.

1 change of counsel” is unnecessarily long and can be split into two shorter, clearer  
2 sentences.

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4 **CONCLUSION**

5 For the foregoing reasons, the State Bar respectfully urges the adoption of  
6 Petition R-16-0017, but with language conforming to the proposed new District of  
7 Arizona LRCiv 83.3 and the stylistic conventions being utilized in other current  
8 revisions to the Arizona Rules of Civil Procedure.  
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11 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of May, 2016.

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16 John A. Furlong  
17 General Counsel  
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19 Electronic copy filed with the  
20 Clerk of the Arizona Supreme Court  
21 this 16<sup>th</sup> day of May, 2016.

22 by:   
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